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August 6, 2008

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, New Hampshire 03301

Re: Puc 800 – Underground Utility Damage Prevention Program
PUC Docket: DRM 08-091

Dear Mr. Eaton:

Enclosed please find documents to be filed with your office regarding the above-referenced docket:

- 1) Appendix II-C, Rulemaking Notice Form;
- 2) Fiscal Impact Statement – FIS 08:168 (2 copies);
- 3) PUC 800 - Initial Proposal (2 copies).
- 4) Cross Reference Table of Applicable Statutes (2 copies);

Please include the Rulemaking Notice Form in the next available Rulemaking Register

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Ducharme".

Jennifer Ducharme
Legal Assistant

Enclosures

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____

Rule Number Puc 800

<p>1. Agency Name & Address:</p> <p>Public Utilities Commission 21 South Fruit Street Suite 10 Concord, NH 03301</p>	<p>2. RSA Authority: RSA 374:50, RSA 365:8</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u> X </u></p>
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5. Short Title: **Puc 800 - UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM**

6. (a) Summary of what the rule says and the effect of the rule on those regulated: **Puc 800 sets forth the procedures and standards to be used by the PUC in implementing the Underground Utility Damage Prevention program, otherwise known as Dig Safe, which protects the public, operators, and excavators from physical harm, damages and interrupted service resulting from damage to underground facilities. This Rule also establishes procedures and requirements relative to: minimum requirements for the operation of the system; including notification procedures; the investigation of complaints; emergency situations for which notice of excavation is not required; the prevention of damage relating to underground facilities; enforcement; and record keeping.**

6. (b) Brief description of the groups affected: **These rules affect persons or entities performing excavation activities and who own underground utilities. This also includes persons or entities that perform excavation on private property, public ways, rights-of-way, easements, public streets or any other public place.**

APPENDIX II-C (Continued)

RULEMAKING NOTICE FORM - Page 2

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement: **RSA 374:48-55.**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Donald M. Kreis, Esq.**
Address: **21 South Fruit Street**
Suite 10
Concord, NH 03301

Title: **General Counsel**
Phone #: **603-271-6006**
Fax#: **603-271-3878**
E-mail: **Donald.kreis@puc.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **September 30, 2008**

☒ Fax - **603-271-3878**

☒ E-mail -
Donald.kreis@puc.nh.gov

☐ Other format (specify):

Public hearing scheduled for:

Date and Time: **September 15, 2008 at 10:00 AM**

Place: **Public Utilities Commission**

21 South Fruit Street, Suite 10

Concord, NH 03301

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **08:168** , dated **8/6/08**

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution: **The proposed rules do not modify an existing program or responsibility, and do not apply to any political subdivision and therefore do not violate Part I, Article 28-a.**

LBAO
FIS 08:168
08/06/08

Fiscal Impact Statement for Public Utilities Commission rules governing the Underground Utility Damage Prevention Program. [Puc 800]

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when the proposed rule is compared to the existing rule.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate; no impact on state funds.

3. Cost and benefits of the proposed rule(s):

There are no costs or benefits attributable to the proposed rule.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

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CHAPTER Puc 800 UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM

PART Puc 801 APPLICATION OF RULES

Readopt Puc 801.01 – 801.02, effective 8-23-00 (Document # 7350) to read as follows:

Puc 801.01 Purpose.

- (a) The purpose of Puc 800 is to protect the public, operators, and excavators from physical harm, damages, and interrupted service resulting from damage to underground facilities.
- (b) Puc 800 establishes procedures and requirements relative to:
 - (1) Minimum requirements for the operation of the system, including notification procedures;
 - (2) The investigation of complaints;
 - (3) Emergency situations for which notice of excavation is not required;
 - (4) The prevention of damage relating to underground facilities;
 - (5) Enforcement; and
 - (6) Record keeping.

Puc 801.02 Application.

- (a) Each operator, as defined in Puc 802.12~~1~~, shall:
 - (1) Comply with Puc 800 and RSA 374:48-56; and
 - (2) Maintain membership with the notification center.
- (b) Any person, including any person who owns or operates an underground facility in New Hampshire but who is not an operator, as defined in Puc 802.12~~1~~, may become a member of the notification center.
- (c) Any member of the notification center who is not an operator but who owns or operates an underground facility shall comply with Puc 800.

PART Puc 802 DEFINITIONS

Adopt Puc 802.01 to read as follows:

Puc 802~~4~~.01 “Blasting” means “blasting” as defined in RSA 374:48, VIII, namely, “excavation by means of explosives.”

Readopt Puc 802.01 – 802.03 and renumber as Puc 802.02-802.04, effective 8-23-00 (Document # 7350) to read as follows:

Puc 802.04~~2~~ “Commission” means “commission” as defined in RSA 374:48, I, namely, “the public utilities commission.”

Puc 802.023 "Damage" means any impact or exposure that results in the need to repair an underground facility due to the weakening or the partial or complete destruction of the underground facility, including, but not limited to, the protective coating, lateral support, corrosion control, or the housing for the line, device, or underground facility.

Puc 802.043 "Emergency situation" means a sudden or unexpected occurrence involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

Readopt Puc 802.04 and renumber as Puc 802.05, effective 5-29-03 (Document # 7900) to read as follows:

Puc 802.054 "Excavation" means "excavation" as defined in RSA 374:48, III, namely, "any operation conducted on private property or in a public way, right-of-way, easement, public street, or other public place, in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence or sign post installation, pile driving, wrecking, razing, rending or moving any structure or mass material, but does not include the tilling of soil for agricultural purposes, landscaping and maintenance of residential property performed with non-mechanized equipment, landscaping activities performed with mechanized equipment that are intended to cut vegetation, including lawn edging, aeration, and de-thatching, excavations permitted or grand fathered under RSA 155-E, or replacement of department-of-transportation-installed delineator posts in the same location."

Readopt Puc 802.05 – 802.07 and renumber as Puc 802.06 - 802.08, effective 8-23-00 (Document # 7350) to read as follows:

Puc 802.065 "Excavator" means "excavator" as defined in RSA 374:48, IV, namely, "any person performing an excavation."

Puc 802.076 "Extraordinary circumstances" means events or conditions other than normal operating conditions which exist and make it significantly impractical or impossible for an underground facility owner or member owning and/or operating an underground facility to comply with the provisions of Puc 800, including, but not limited to, hurricanes, tornadoes, floods, ice or snow, and acts of God.

Puc 802.087 "Hand digging" means any excavation involving non-mechanized tools or equipment and includes, but is not limited to, digging with shovels, picks, and manual post hole diggers.

Adopt Puc 802.09 – 802.10 to read as follows:

Puc 802.09 "Holiday" means any legal holiday pursuant to RSA 288:1 or, when such holiday falls on a Sunday, the following day pursuant to RSA 288:2.

Puc 802.10 "Locator" means a person acting on behalf of an operator to identify and mark the locations of underground facilities in accordance with Puc 806.

Repeal Puc 802.08 – 802.09, effective 8-23-00 (Document # 7350):

~~Puc 802.08 "NOPV" means notice of probable violation.~~

~~Puc 802.09 "NOV" means notice of violation.~~

Readopt Puc 802.10 and renumber as Puc 802.11, effective 8-23-00 (Document # 7350) to read as follows:

Puc 802.11~~0~~ "Notification center" means the entity that performs the primary function of the system, is open to all operators within the state of New Hampshire, maintains a data base of its members and operators and the specific geographic areas in which each of its members and operators desires to receive notice of proposed excavation, and which has the capability to transmit notices of proposed excavation to its members and operators by teletype, telecopy, personal computer, telephone, or other comparable means.

Readopt with amendment Puc 802.11 and renumber as Puc 802.12, effective 5-29-03 (Document # 7900) to read as follows:

Puc 802.12~~1~~ "Operator" means "operator" as defined in RSA 374:48, IV-a, namely, "any public utility as defined in RSA 362:2 or RSA 362:4 and any cable television system as defined in RSA 53-C:1~~7~~, and any liquefied petroleum gas company operating any jurisdictional facility or facilities as defined by the Natural Gas Pipeline Safety Act (49 U.S.C. chapter 601) ~~that owns or operates an underground facility~~." ~~The term also includes operators of liquefied petroleum or LP systems.~~

Readopt Puc 802.12 – 802.15 and renumber as Puc 802.13 – 802.16, effective 8-23-00 (Document # 7350) to read as follows:

Puc 802.13~~2~~ "Person" means "person" as defined in RSA 374:48, V, namely, "any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body."

Puc 802.14~~3~~ "Premark" means identifying the perimeter of the proposed site of an excavation by marking the perimeter in an appropriate manner in white paint, stakes or other suitable white markings on non-paved surfaces.

Puc 802.15~~4~~ "System" means "system" as defined in RSA 374:48, I, namely, "the underground utility damage prevention system referred to in RSA 374:49".

Puc 802.16~~5~~ "Tolerance zone" means an area surrounding an underground facility which is 36 inches wide, measured horizontally and equidistant from the centerline of the underground facility, plus the width of the underground facility itself.

Readopt Puc 802.16 and renumber as Puc 802.17, effective 5-29-03 (Document # 7900) to read as follows:

Puc 802.17~~6~~ "Underground facility" means "underground facility" as defined in RSA 374:48, VII, namely, "any private property or property which is buried, placed below ground, or submerged on a public way, right-of-way, easement, public street, or other public place and is being used or will be used for the conveyance of cable television, electricity, gas, sewerage, steam, telecommunications or water."

PART Puc 803 SYSTEM REQUIREMENTS

Readopt with amendment Puc 803.01, effective 8-23-00 (Document # 7350) to read as follows:

Puc 803.01 Procedures and Operation of Notification Center.

(a) The system shall operate a notification center, as contemplated by RSA 374:49.

(b) The notification center required by (a) above shall:

- (1) Receive notification from excavators about intended excavation activities;
- (2) Provide to excavators who give notice of an intent to engage in an excavation activity the names of potentially affected operators and members owning or operating underground facilities to whom the notification center shall transmit notice;
- (3) Promptly transmit to potentially affected operators and members the information received from excavators about intended excavation activities;
- (4) Provide the excavator at the time of initial contact a registration number confirming the notification of intended excavation activity;
- (5) Create a record, which shall include the material included in (6) below, of each notification of intent to engage in an excavation activity and related communication;
- (6) Create, pursuant to (5) above, a record of each proposed excavation, including the following:
 - a. The name of the person notifying the notification center;
 - b. The name, address and telephone number of the excavator;
 - c. The specific location, starting date, and description of the intended excavation activity;
 - d. The name(s) of any sub-contractor or other person or entity who the excavator indicates may excavate at the intended excavation site on behalf of the excavator making the notification;
 - e. The date and time of the notification;
 - f. The confirmation or registration number;
 - g. The identity of potentially affected members and operators that the notification center contacts to inform of the intended excavation activity;
 - h. The date and time the notification center transmitted notice of the intended excavation activity to each potentially affected member and operator; and
 - i. The date and time the notification will expire in accordance with Puc 805.01 (b)
 - j. As to any material follow-up communication relating to the proposed excavation activity directed to the communications center:
 1. The party or parties involved in the communication;
 2. The content of the communication;
 3. The date and time of the communication; and
 4. The date, time and recipient of any transmittal of the communication; and
- (7) Maintain the record required to be kept by (5) and (6) above for a period of a minimum of 3 years from the date of the last communication.

(c) The current toll-free telephone numbers of the notification center for reporting proposed excavations and otherwise communicating with the notification center shall be, “1-888-“DIG-SAFE”, which is, 1-888-344-7233 or 811.

(d) The notification center shall also maintain an internet-based system for proposed excavations at www.digsafe.com.

(e) Operators and members of the notification center shall use communications equipment that shall be compatible with the notification center.

(f) The notification center shall develop and implement procedures and ~~use~~utilize communication equipment which are adequate to acknowledge calls within 20 seconds.

(g) The notification center shall staff its operation a minimum of 10 hours each day, 5 days each week, excluding Saturdays, Sundays, and ~~legal New Hampshire~~ holidays, to respond to both routine and emergency calls.

(h) During the hours that the notification center is not operated by staff, the notification center shall provide at a minimum for an answering service capable of responding to an emergency notification request 24 hours per day, 7 days per week.

(i) The training provided by the notification center shall direct the public to make emergency calls to 911.

(j) The notification center shall be capable of responding to a request for emergency notification and shall transmit the information as provided in (k)(3) below.

(k) The notification center shall transmit information as follows:

- (1) Notices of proposed excavation activities to potentially affected members and operators by 5:00 p.m. on the date of receipt;
- (2) Routine messages by 5:00 p.m. on the date of receipt; and
- (3) Messages relating to emergency situations, as described in Puc 8045.03, to any potentially affected member, operator or excavator, as applicable, as soon as possible, but not later than 10 minutes following receipt.

Readopt Puc 803.02, effective 8-23-00 (Document # 7350) to read as follows:

Puc 803.02 Education and Training.

(a) The notification center shall assure that the toll-free telephone number shall be prominently displayed in telephone directories state-wide.

(b) The notification center shall:

- (1) Make available literature describing the notification center;
- (2) Assure the distribution of such literature to the public; and
- (3) Make such literature available for purchase and distribution by requesting parties.

(c) The notification center shall, upon request, provide training to its members regarding the operations of the notification center.

(d) The notification center shall provide all members and interested persons with a brochure explaining the notification center's objectives, procedural guidelines, and opportunities for member participation.

(e) Any operator who owns and/or operates an underground facility used in the transportation of gas or hazardous liquids and subject to the pipeline safety laws, 49 U.S.C. 60101, shall:

(1) Maintain a current list of the names and contact information of persons who normally engage in excavation activities in the area in which any underground facility used in the transportation of gas or hazardous liquids and subject to the pipeline safety laws, 49 U.S.C. 60101, owned by that operator is located;

(2) Notify the public in the vicinity of any underground facility used in the transportation of gas or hazardous liquids subject to the pipeline safety laws, 49 U.S.C. 60101 owned by that operator; and

(3) Notify persons who normally excavate in the area in which an underground facility used in the transportation of gas or hazardous liquids subject to the pipeline safety laws, 49 U.S.C. 60101 owned by that operator, as often as needed to make them aware of the notification center, including:

a. The notification center's existence and purpose; and

b. How to learn the location of underground facilities before excavation activities are begun.

(f) An affected operator may complete the notification required by (e)(2) above by:

(1) Distributing fliers;

(2) Informational mailings;

(3) Placing line markers;

(4) Signage; and/or

(5) Other reasonable public education outreach consistent with (1) through (4) above.

(g) An affected operator may complete the notification required by (e)(3) above by means including but not limited to distributing informational mailings and/or conducting informational sessions.

PART Puc 804 DUTIES OF OPERATORS

Readopt with amendment Puc 804.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 804.01 Reporting Requirements for Operators of Underground Facilities.

(a) Each operator shall file monthly, including any month in which there are no violations to report, with the commission, on or before the 15th day of the following month, written reports of probable violations of Puc 800, damage to underground facilities, or both.

(b) Each operator shall file reports required by (a) above on Form E-26.

(c) Each operator shall include the following in Form E-26:

(1) The date the incident was reported;

(2) The date the incident occurred;

(3) The name and address of the person reporting;

(4) The reporter's name and phone number;

- (5) The location of the damage, violation, or both;
- (6) A description of the property damaged, if any;
- (7) A description of the facility, including:
 - a. Details of the facility such as the type, size, material, pressure, voltage, or both; and
 - b. Type of facility by ownership, such as, customer-owned, municipal-owned or utility-owned.
- (8) A description of damage to the facility, if any;
- (9) Cost estimate of damage, if any, and whether the excavator has been billed;
- (10) A description of personal injuries, if any;
- (11) The excavator's name, address, and phone number;
- (12) The excavator's employer, if applicable;
- (13) A description of the incident;
- (14) The type of marking used at the location, if any;
- (15) Details fully describing whether:
 - a. The situation was an emergency;
 - b. The notification procedure was or was not followed as prescribed;
 - c. The notification was completed and, if so, provide the registration number and date of notification;
 - d. The notification was completed and the location was not premarked;
 - e. The notification was completed and the location was not marked;
 - f. The notification was completed but markings were not maintained;
 - g. The notification was completed, the location was marked, but markings were incorrect;
 - h. The notification was completed and the location was marked but damage occurred; and
 - i. The notification procedures were not followed and damaged occurred.

(d) If there are no reportable incidents during a month the operator shall file a one page notification report using Form E-26, on or before the 15th day of the following month, identifying the owner or operator and stating that no reportable incident of damage or a violation occurred during the month.

(e) The operator shall send the reporting form required by this section to the New Hampshire public utilities commission, safety division, at its mailing address as provided on the E-26 form or electronically as specified on the commission's web site. ~~by electronic mail to: puc@puc.state.nh.us~~

Readopt with amendment Puc 804.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 804.02 Notification Requirements.

(a) Any operator who owns, operates, or both, an underground facility used in the transportation of gas or hazardous liquids and subject to the federal pipeline safety statute~~laws~~, 49 U.S.C. §§ 60101 to 60137, shall:

(1) Maintain a current list of the names and contact information of persons who normally engage in excavation activities in the area in which any underground facility used in the transportation of gas or hazardous liquids and subject to the federal pipeline safety statute~~laws~~, 49 U.S.C. 60101, owned by that operator is located;

(2) Notify abutters of the existence of an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline safety statute~~laws~~, 49 U.S.C. 60101, owned by that operator; and

(3) Notify persons who normally excavate in the area in which an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline safety statute~~laws~~, 49 U.S.C. 60101 owned by that operator, as often as needed to make them aware of the notification center, including:

a. The notification center's existence and purpose; and

b. How to learn the location of underground facilities before excavation activities begin.

(b) An affected operator may complete the notification required by Puc 803.02(e)(2) above by:

(1) Distributing fliers;

(2) Informational mailings

(3) Placing line markers;

(4) Signage; or

(5) Other reasonable public education outreach consistent.

(c) An affected operator may complete the notification required by Puc 803.02(e)(3) above by means including but not limited to distributing informational mailings, conducting informational sessions, or both.

(d) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator. Underground facilities which the owner shall not be required to locate shall include, but shall not be limited to, facilities running from a house to a garage or other outbuilding.

(e) When no underground facility is within the area of a proposed excavation, an owner or operator receiving notification of the proposed excavation shall so advise the excavator by:

(1) Marking the non existence of facilities within the premarked area of intended excavation in accordance with Puc 806;

(2) Participating in a meeting where details of the job site are discussed and documented; or

(3) Communicating with the operator via e-mail, fax, telephone or other electronic communication, provided that the excavator confirms receipt of such communication.

Adopt Puc 804.03 to read as follows:

Puc 804.03 Training of Locators.

(a) Locators shall be trained in accordance with National Utility Locating Contractors Association (NULCA) standards or equivalent.

PART Puc 805 DUTIES OF AN EXCAVATOR

Readopt Puc 805.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.01 Notification Required Prior to Excavation.

(a) Excavators shall, pursuant to RSA 374:51 notify the notification center:

- (1) Not less than 72 hours prior to a proposed excavation, not including Saturdays, Sundays and legal holidays; and
- (2) Not more than 30 days prior to a proposed excavation is to be made.

(b) The excavator's notification, required by (a) above, shall be valid for 30 calendar days from the date and time the notification center confirms the notification.

(c) When an excavator contacts the notification center as described in (a) above, it shall provide the following:

- (1) The name of the person notifying the notification center;
- (2) The name, address and telephone number of the excavator;
- (3) The name of each sub-contractor or other person or entity who might excavate at the intended excavation site on behalf of the excavator making the notification; and
- (4) The specific location, starting date, and description of the intended excavation activity.

(d) Prior to complying with the notification requirements of RSA 374:51, II and (a) above, an excavator shall, pursuant to RSA 374:51, IV, premark the area of proposed excavation by identifying the perimeter of the proposed site of the excavation.

(e) The excavator shall premark in a way that does not interfere with traffic or pedestrian control and is not misleading to the general public.

(f) An excavator shall not be required to premark any continuous excavation that is over 100 feet in length, or any pole replacement that is within 5 feet of an existing location.

(g) If an excavation is over 100 feet in length or a pole replacement is within 5 feet of an existing location, the excavator shall communicate the perimeter of the excavation to any potentially affected operator, member of the notification center who owns or operates an underground facility, or both by:

- (1) Providing a detailed description of the site area;
- (2) Providing detailed construction plans;
- (3) Holding an on-site meeting with potentially affected operators; or
- (4) Providing other suitable means of communicating the perimeter of the excavation to any potentially affected operator, member, or both, of the notification center who owns or operates an underground facility.

(h) Once an owner or operator of an underground facility has marked the location of its underground facility in the area of an excavation, pursuant to RSA 374:53 and Puc 805.02, the excavator, and any

subcontractor, employee or agent of the excavator performing work on behalf of the excavator at the site, shall be responsible for maintaining the markings during the excavation.

(i) No person or entity not an employee of the excavator shall excavate on behalf of an excavator as a subcontractor or otherwise without separately complying with the notification requirements of this section, unless the excavator has notified the notification center of the identity of that person or entity as provided in (c)(3) above.

(j) A subcontractor of the excavator or other entity may excavate pursuant to the excavator's notification to the notification center if the subcontractor or entity:

- (1) Performs excavation at the location specified in the notification;
- (2) Has a contract to perform this excavation with the excavator;
- (3) Does the excavation work specified in the notification;
- (4) Is listed with the notification center, as provided in (c) (3) above; and
- (5) Otherwise complies with Puc 800, RSA 374:48-56 and other applicable law.

(k) No person shall misuse the intent of the notification center by making a request for marking of an underground facility for other than excavating activities, such as for conducting an engineering design without intending to excavate at the site in question within 30 days.

Readopt with Amendment Puc 805.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.02 Excavation That Affects the Tolerance Zone.

(a) Any person conducting excavation activity that affects the tolerance zone surrounding an underground facility shall exercise at all times such reasonable care as is necessary to protect the underground facility from damage.

(b) Except as provided in (c) below, in order to locate and identify an underground facility, the excavator shall excavate by methods limited to:

- (1) Hand digging
- (2) Pot holing;
- (3) Soft digging;
- (4) Vacuum excavation
- (5) Other mechanical methods with the approval of the underground facility owner or operator; or
- (6) Other methods accepted in the industry consistent with the alternatives listed in (1) through (5) above, which clearly will not affect the integrity of the underground facility.

(c) For pavement removal an excavator shall not be limited to hand digging and the other non-invasive methods cited in (b) above.

(d) For parallel type excavations, such as excavation along an existing underground facility at an approximately equal distance when measured periodically, the excavator shall expose the existing underground facility at intervals as often as necessary to avoid damage.

(e) For trenchless excavations, such as horizontal drilling, boring, pneumatic jacking, tunneling and pavement reclamation, reasonable care for purposes of Puc 805.02(a) shall include determining the exact depth of the underground facility and clearances required by the operator and incorporating location details into the trenchless excavation procedure so as to avoid any potential damage of the underground facility.

Readopt with amendment Puc 805.03 effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.03 Emergency Situations.

(a) If necessary to respond in an emergency situation, an excavator may begin an excavation without notifying the notification center prior to excavation as required by Puc 804.01, but shall notify the notification center at the earliest practicable moment.

(b) In notifying the notification center of excavation or intended excavation in an emergency situation, the excavator shall specifically identify the dangerous condition involved.

(c) While an excavator who excavates in an emergency situation shall not be liable on that basis for a failure to notify the notification center as required by Puc 804.01, nothing in this section shall relieve the excavator from liability if:

(1) The excavator damages an underground facility which has been properly marked or which has not been marked; ~~and~~ or

(2) The excavation does not qualify as an emergency excavation.

(d) No excavator shall indicate to the notification center or to an operator or member of the notification center that owns or operates an underground facility that an event constitutes an emergency situation unless the excavator believes in good faith that the circumstances do constitute an emergency situation.

(e) If the parties request, pursuant to Puc 200, a determination by the commission as whether a situation is, or was, an emergency situation, the commission shall make such a determination based on a review of the facts of the situation and the definition of emergency situation.

Adopt Puc 805.04 – 805.05 to read as follows:

Puc 805.04 Blasting.

(a) When an excavator determines that blasting will be required during an excavation, the excavator shall inform the notification center when providing notice of the excavation.

(b) If an excavator determines during the effective term of the excavator's notification that blasting is required within the area premarked in accordance with Puc 805.01 (d), the excavator shall notify the notification center of the need to blast. Notification shall be made at least 24 hours prior to any blasting, not including Saturdays, Sundays, and holidays.

(c) -When unanticipated obstructions prevent further excavation without blasting, the excavator shall provide separate notice of such blasting not less than four hours in advance of such blasting, not including the hours of 4:00 p.m. to 6:00 a.m. weekdays, or all of Saturdays, Sundays, and holidays.

Puc 805.05 Damage to an Underground Facility.

(a) When an excavator causes any damage to an underground facility, the excavator shall:

(1) Call 911 when:

(a) A gas underground facility is damaged and there is a release of gas,

(b) An electric underground facility is damaged and an excavator determines that a person may have received an electric shock, or

(c) Any other facility is damaged and public safety is affected;

(2) Evacuate nearby structures if necessary;

(3) Contact the facility owner or operator;

(4) Attempt no repairs;

(5) Call 811 or 888-DIG SAFE (Notification Center); and

(6) Report the damage to the commission.

PART Puc 806 MARKING THE TOLERANCE ZONE

Readopt Puc 806.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.01 Tolerance Zone.

(a) An operator shall use one of the following marking methods to mark the tolerance zone of an underground facility:

(1) The corridor marking method which shall be the practice of placing markers at either boundary of the tolerance zone, such that the markers will be 18 inches plus one-half the width of the facility away from the facility centerline;

(2) The centerline marking method which shall be the practice of placing markers directly over the centerline of the facility establishing boundaries at points located 18 inches plus one-half the width of the facility from the markers; or

(3) The offset marking method which shall be the practice of locating the centerline of the facility and placing markers at locations which parallel the facility.

(b) Any operator shall use the offset marking method only when it is impractical to use either the corridor or centerline methods, such as in marking in the traveled portion of an unpaved roadway.

(c) When marking an underground facility an operator shall mark the underground facility consistent with the color code for the utility type of the underground facility, as set forth in Puc 806.02.

(d) In the event an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation activity, and the corridor marking method is to be applied, the operator may mark one tolerance zone.

(e) When an operator marks 2 or more underground facilities as described in (d) above:

(1) The operator shall establish the boundaries of the tolerance zone by use of the corridor marking method by locating the boundaries of each separate underground facility and placing markers at the outer boundaries of the multiple underground facilities; and

(2) When the marking results in one area being marked, the operator shall inform the excavator of the marking of each of the separate underground facilities within the marked boundaries, either verbally or by appropriate single markings pursuant to Puc 806.01.

(f) When an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation and the centerline marking method is to be applied, the operator shall place markers, conforming with Puc 806.01(a)(2), over the centerline of each facility.

(g) In the event the operator or member who owns and/or operates an underground facility is unable to designate the location of the underground facility due to extraordinary circumstances, the operator or member shall notify the notification center and provide an estimated completion date. The notification center shall then document on the existing notification ticket, utilizing an attachment message, that the utility is unable to designate the location of the underground facility. The operator shall notify the excavator who called the notification center that it is unable to designate the location of the underground facility due to extraordinary circumstances.

Readopt with amendment Puc 806.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.02 Markers.

(a) Within 72 hours after receipt of notice from a proposed excavator or from the notification center of a proposed excavation, but not including Saturdays, Sundays and legal holidays, an operator or member of the notification center who owns or operates an underground facility, shall

(1) ~~mark~~ the location of its underground facility in the area of the proposed excavation; or

(2) If no underground facility is within the area of the proposed excavation, so notify the excavator pursuant to Puc 804.02(e).

(b) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator. Underground facilities which the owner shall not be required to locate shall include, but not be limited to, facilities running from a house to a garage or other outbuilding.

(c) An operator shall mark underground facilities by the use of paint, stakes, flags, or by any other means that clearly indicates the location of the underground facility.

(d) An operator shall consider the physical characteristics in the area of the proposed excavation in determining the type of marker to be used.

(e) Operators shall mark underground facilities according to the following color code:

(1) Red shall be used for underground facilities conveying electric power, electric cable conduits or lighting cables;

(2) Yellow shall be use for underground facilities conveying gas, oil, steam, petroleum, or gaseous materials;

(3) Orange shall be used for underground facilities used for communications, alarm, signal, communications cables, or communications conduit;

(4) Blue shall be used for underground facilities conveying water or used for irrigation or slurry lines; and

(5) Green shall be used for underground facilities conveying sewer or used for drain lines.

(f) Excavators shall use the color white for the pre-marking of the boundaries of a proposed excavation, except as provided in (g) below.

(g) Excavators shall use pink for pre-marking when snow conditions would render white premarking not clearly visible.

Readopt with amendment Puc 806.03, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.03 Identification.

(a) When an operator marks its underground facility it shall indicate:

- (1) The width of the underground facility for all facilities greater than 1 inch nominal diameter;
- (2) The specific owner or operator of the underground facility; and
- (3) The function of the underground facility.

(b) For purposes of Puc 806.03 (a)-(3) functions shall be marked by using:

- (1) The letter E for underground facilities conveying electricity;
- (2) The letter G for underground facilities conveying gas;
- (3) The letters PP for underground facilities conveying oil;
- (4) The letters ST for underground facilities conveying steam;
- (5) The letters CH for underground facilities conveying chemicals;
- (6) The letter T for underground facilities containing telephone wires or cable;
- (7) The letters CATV for underground facilities conveying cable television signals;
- (8) The letters TC for underground facilities conveying traffic control information or signals;
- (9) The letters FA for underground facilities conveying fire alarm information or signals;
- (10) The letter W for underground facilities conveying water;
- (11) The letters RW for underground facilities conveying reclaimed water;
- (12) The letter S for underground facilities conveying sewage;
- (13) The letters SS for underground facilities conveying storm sewage; and
- (14) The letters SD shall be used for underground facilities used for storm drainage.

(c) ~~——(b)~~ An operator shall identify with markings any changes in direction or terminations occurring within the immediate area of the proposed excavation with arrows or other appropriate indicators.

Readopt Puc 806.04, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.04 Emergency Procedures.

(a) Each operator and member of the notification center who owns, operates underground facilities, or both, shall develop internal practices and procedures to:

- (1) Receive and respond to emergency notifications; and
- (2) Mark the location of facilities in emergency situations.

Adopt Puc 806.05 to read as follows:

Puc 806.05 Marking Certain Newly Installed Underground Facilities.

(a) Upon completing the installation of new underground facilities within an area that has been subject to excavator notification and premarking pursuant to Puc 805.01, an operator shall make reasonable efforts to communicate the existence of such facilities if they are covered with soil or other material that impairs their visibility.

(b) For purposes of (a) above, reasonable efforts shall include:

- (1) Marking the tolerance zone in accordance with 806.01, 806.02, 806.03, and 806.04;
- (2) Contacting the excavator with information regarding the presence of the newly constructed facilities, or
- (3) Leaving a tag or marker clearly indicating the presence of the newly constructed facilities with contact information.

PART Puc 807 ENFORCEMENT PROCEDURES

Readopt Puc 807.01 – 807.07, effective 5-29-03 (Document # 7900) to read as follows:

Puc 807.01 Investigation of Complaints.

(a) The notification center shall institute procedures to receive and resolve complaints of excavators, operators, owners or operators of underground facilities, members, and the general public.

(b) Owners and operators of underground facilities shall institute procedures to receive and resolve complaints of excavators and the general public.

(c) The commission staff shall consider and decide unresolved complaints pursuant to the procedures established in Puc 200.

(d) An unresolved dispute relating to Puc 800 which is appealed in writing to the commission shall be handled as follows:

- (1) The matter shall be treated as a request for an adjudicatory proceeding; and
- (2) The parties to the dispute shall have a right of appeal by petition to the New Hampshire Supreme Court pursuant to RSA 541:6.

Puc 807.02 Notice of Probable Violation.

(a) In the event the commission staff determines that a probable violation of RSA 374:48-56, Puc 800, or both, has occurred, staff shall issue a written notice of probable violation (NOPV) to the party alleged to have committed the violation.

(b) The commission staff shall send information regarding the NOPV by certified mail to the party regarded as in violation.

(c) The NOPV shall include the following:

- (1) A description of the probable violation and reference to the rule or statute regarded as violated;
- (2) The date and location of the probable violation;
- (3) A statement notifying the party or parties involved that civil penalties might be imposed pursuant to RSA 374:48-56, in the event of unfavorable judgment;
- (4) Statutory rights of the respondent as enumerated in RSA 374:48-56; and
- (5) Procedures for resolving the complaint.

(d) Any owner or operator of an underground facility involved in the NOPV shall provide a representative for any informal conference or hearing scheduled pursuant to Puc 800.

Puc 807.03 Alternative Responses to Notice of Probable Violation.

(a) Upon receipt of the NOPV the respondent shall either:

- (1) Submit to the commission within 30 days, in writing, evidence refuting the probable violation referenced in the NOPV;
- (2) Request in writing within 30 days, an informal conference with commission staff to examine the basis of the probable violation; or
- (3) Execute a consent agreement with the commission resolving the probable violation.

(b) If the respondent requests an informal conference pursuant to (a)(2) above, the commission staff shall set a date and time for the informal conference.

Puc 807.04 Notice of Violation.

(a) If the commission or commission staff involved in the damage prevention program, after reviewing evidence and testimony obtained in writing or conferences, determines that a violation of RSA 374:48-56, Puc 800, or both, has occurred, the commission or commission staff involved in the damage prevention program shall issue a notice of violation (NOV) to the respondent pursuant to RSA 374:55, VII.

(b) The NOV so issued shall include:

- (1) The factual and statutory basis for the unfavorable preliminary determination;
- (2) A description of factors relied upon by commission staff in making its determination, such as the gravity of the violation, history of prior violations, degree of culpability of the respondent, how quickly the respondent took action to rectify the situation, cooperativeness of respondent, and any other factors which would tend to either aggravate or mitigate the violation;

- (3) The civil penalty, if any, proposed to be imposed;
- (4) Procedures for remitting penalty; and
- (5) Statutory rights of the respondent as enumerated in RSA 374:48-56.

Puc 807.05 Response to Notice of Violation.

- (a) Within 10 days from receipt of the NOV, the respondent shall either:
 - (1) Sign a consent agreement and remit the civil penalty; or
 - (2) File a request in writing for a hearing before the commission.

Puc 807.06 Commission Action.

- (a) The commission shall act upon Staff's recommendation unless the respondent requests a hearing pursuant to Puc 807.05(a)(2). Upon such hearing request, the commission shall provide the respondent with notice and an opportunity for a hearing, held pursuant to Puc 200. At the hearing, the respondent may show by a preponderance of the evidence why the commission or designated commission staff determination should be changed.

Puc 807.07 Civil Penalties.

- (a) If the commission or designated commission staff within the division of safety finds reason to issue an NOV, the commission or designated commission staff shall propose to assess a civil penalty pursuant to RSA 374:55.

- (b) In determining the assessment, the following factors shall be considered:

- (1) The severity of the consequences resulting from the violation such that the more severe the consequences, the higher the civil penalty, the gravity of the violation, degree of culpability of the respondent, cooperativeness of respondent, history of prior violations, and other factors which would tend to aggravate fault; and
- (2) Mitigating circumstances, such as how quickly the excavator took action to rectify the situation, how much control the excavator had over the situation, and other circumstance which would tend to lessen fault.

APPENDIX

Provision of the Proposed Rule	Specific State or Federal Statutes or Regulations which the Rule is Intended to Implement
Puc 800 (other specific statute provisions implemented by specific rules are listed below)	RSA 374:50, 374:55, V
<u>Puc 801.01</u>	<u>RSA 374:55 VII</u>
<u>Puc 801.N1</u> <u>Puc 801.N2</u>	<u>RSA 374:53</u>
Puc 803.01	RSA 374:50, I
<u>803.01 (6) (i)</u>	<u>RSA 374:51 II</u>
<u>803.01 (7) (c)</u>	<u>RSA 374:51 II</u>
Puc 803.02	RSA 374:50, II
Puc 804	RSA 374:50, III
<u>804:02 (e)</u>	<u>RSA 374:53</u>
<u>804:03</u>	<u>RSA 374:53</u>
<u>805:04</u> <u>805.05</u>	<u>RSA 374:55 VII</u> <u>RSA 374:54</u>
Puc 805.06	RSA 374:55, V
Puc 806	RSA 374:50, II
<u>Puc 806.05</u>	<u>RSA 374:51, VI; RSA 374:53</u>
Puc 806.07	RSA 374:55, V